

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TERENCE CRAWFORD,

Case No.: 2:22-cv-00081-APG-EJY

Plaintiff

## **Order Granting Motion to Remand**

V.

[ECF No. 21]

## TOP RANK, INC.,

Defendant

Top Rank, Inc. removed this case to this court before it was served with process.

9 Plaintiff Terence Crawford moves to remand the case to state court, claiming that removal is  
10 barred by the forum defendant rule found in 28 U.S.C. § 1441(b)(2). Crawford is correct, so I  
11 grant the motion and remand the case.

## PROCEDURAL POSTURE

13 Crawford filed this action in Nevada state court on January 12, 2022. Top Rank is the  
14 only defendant and it is a Nevada entity. ECF No. 1 at 2. Three days after Crawford filed his  
15 complaint, Top Rank removed the case to this court. Crawford had not yet completed service of  
16 process on Top Rank at that time. This tactic of removing a diversity case before a forum  
17 defendant has been served is termed a “snap removal.” The goal is to avoid the bar against  
18 removal that exists when any defendant “properly joined and served” is a forum defendant. 28  
19 U.S.C. § 1441(b)(2). Crawford contends that removal was improper because Top Rank is a  
20 forum defendant and the snap removal violated § 1441(b)(2).

## ANALYSIS

22 "Federal courts are courts of limited jurisdiction. . . . It is to be presumed that a cause lies  
23 outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party

1 asserting jurisdiction.” *Corral v. Select Portfolio Servicing, Inc.*, 878 F.3d 770, 773 (9th Cir.  
2 2017) (quotation omitted). This burden on a removing defendant is especially heavy because  
3 “[t]he removal statute is strictly construed, and any doubt about the right of removal requires  
4 resolution in favor of remand.” *Id.* at 773-74 (quotation omitted); *see also Gaus v. Miles, Inc.*,  
5 980 F.2d 564, 566 (9th Cir. 1992) (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062,  
6 1064 (9th Cir. 1979)) (“Federal jurisdiction must be rejected if there is any doubt as to the right  
7 of removal in the first instance.”).

8 Top Rank argues that the forum defendant rule does not bar removal here because it had  
9 yet not been “properly joined and served” at the time of removal, as required by the statute. 28  
10 U.S.C. § 1441(b)(2). Crawford responds that snap removals like this violate the purpose of  
11 § 1441(b)(2), which is to preserve a plaintiff’s choice of a state court forum by suing a proper  
12 forum defendant. The question is thus whether a forum defendant is permitted to remove a  
13 diversity case before it has been served.

14 The plain language of § 1441(b)(2) does not answer the question, as evidenced by the  
15 number of courts reaching different conclusions on whether snap removal is permitted under the  
16 statute. *See Gentile v. Biogen Idec, Inc.*, 934 F. Supp. 2d 313, 317-18 (D. Mass. 2013) (collecting  
17 cases). “The question has deeply divided district courts across the country.” *Id.* at 315.

18 In *Gentile*, Judge Woodlock held that § 1441(b)(2)’s plain language prohibits snap  
19 removal because it assumes that at least one defendant has been served before removal. *Id.* He  
20 properly applied the prior version of § 1441(b)(2). *Id.* That version stated that an action founded  
21 on diversity of citizenship “shall be removable only if none of the parties in interest properly

1 joined and served as defendants is a citizen of the State in which such action is brought.”<sup>1</sup> In the  
 2 phrase “none of the parties in interest properly joined and served,” the word “none” functions as  
 3 a pronoun and means “not any.” *Id.* at 318.

4 “Any,” in turn, means “one or more indiscriminately from all those of a kind.” . . .  
 5 Inherent in the definition is some number of the “kind” from which the “one or  
 6 more” can be drawn. Accordingly, the use of “none” and definite article “the”  
 7 when referring to “parties” assumes that there is one or more party in interest that  
 has been properly joined and served already at the time of removal, among which  
 may or may not be a forum-state defendant. Thus, section 1441(b) conditioned  
 removal on *some* defendant having been served.

8 *Id.* (simplified). Judge Woodlock noted that the current version of the statute—“any of the  
 9 parties” instead of “none of the parties”—has the same meaning. “[T]he statute assumes at least  
 10 one party has been served; ignoring that assumption would render a court’s analysis under the  
 11 exception nonsensical and the statute’s use of ‘any’ superfluous.” *Id.* Thus, a “basic assumption  
 12 embedded in the statute [is] that a party in interest had been served prior to removal . . . .” *Id.*  
 13 This interpretation precludes snap removals.

14 While this interpretation is not the only one possible, it is the most cogent. Reasonable  
 15 jurists have interpreted this statute differently, and the fact that “[d]istrict courts are in disarray  
 16 on the question”<sup>2</sup> confirms that the statute’s language is ambiguous. I thus “look to canons of  
 17 construction, legislative history, and the statute’s overall purpose to illuminate Congress’s  
 18 intent.” *Moran v. Screening Pros, LLC*, 943 F.3d 1175, 1183 (9th Cir. 2019) (simplified).

19 To confirm the validity of his interpretation, Judge Woodlock examined the history of the  
 20 removal doctrine and the “properly joined and served” language. *Gentile*, 934 F. Supp. 2d at  
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22 <sup>1</sup> The statute was amended in 2011 to its present language. Judge Woodlock found that “the  
 23 amendments did not materially change the relevant language of the statute.” *Gentile*, 934 F.  
 Supp. 2d at 316 n.2.

<sup>2</sup> *Gentile*, 934 F. Supp. 2d at 316.

1 319-21. “The removal power, and by extension the forum defendant rule, is founded on the  
 2 basic premise behind diversity jurisdiction itself, [which] was designed to protect non-forum  
 3 litigants from possible state court bias in favor of forum-state litigants.” *Id.* at 319. Forum  
 4 defendants presumably do not need protection from local bias, so § 1441(b)(2) instead protects  
 5 the plaintiff’s choice of a state court forum where a forum defendant is a proper party. *Id.*

6 There is scant legislative history to help interpret the phrase “properly joined and served.”

7 *Id.* But relevant caselaw confirms that the purpose “was to prevent plaintiffs from defeating  
 8 removal through improper joinder of a forum defendant; incomplete service appears to have been  
 9 included as a means of identifying and policing such abuse by proxy.” *Id.* at 319-20. The goal  
 10 was to thwart gamesmanship by plaintiffs who joined forum defendants with no intent of ever  
 11 serving them.

12 Snap removal, on the other hand, allows gamesmanship by defendants who are  
 13 sophisticated and have sufficient resources (or suspicion of impending litigation) to monitor  
 14 court filings and immediately remove a case before a forum defendant can be served. This  
 15 practice has become more prevalent with the advent of modern technology that allows near-real-  
 16 time monitoring of dockets across the country. While there is no indication that Top Rank was  
 17 trolling court dockets looking for lawsuits against it, it is apparent that it removed the case soon  
 18 after becoming aware of it in an attempt to avoid the forum defendant rule. Congress would not  
 19 have wanted to stop gamesmanship by plaintiffs by allowing gamesmanship by defendants. This  
 20 is especially true where, as here, the only defendant is a forum defendant not needing the  
 21 perceived protections of the federal court.

22 The purposes underlying § 1441(b)(2) are better served by disallowing removal before  
 23 any defendant is served. The plaintiff can preserve its ability to remain in state court by serving

1 the forum defendant first and without delay. A non-forum defendant may still argue that the  
2 forum defendant is a sham who should be disregarded for purposes of removal. *See Gentile*, 934  
3 F. Supp. 2d at 322-23. And this interpretation is consistent with § 1441(b)(2)'s plain language.  
4 *Id.* at 323.

5 Here, there is more than considerable doubt as to Top Rank's right to remove, so federal  
6 jurisdiction must be rejected. *Gaus*, 980 F.2d at 566. Top Rank is a forum defendant, and its  
7 removal was premature because it had not yet been served and only three days elapsed between  
8 filing the complaint and removal. I thus must remand the case to state court. I deny Crawford's  
9 request for attorneys' fees because, while removal was improper, the impropriety of snap  
10 removal is not so well-recognized to deem removal here frivolous or objectively unreasonable.  
11 *Patel v. Del Taco, Inc.*, 446 F.3d 996, 999 (9th Cir. 2006).

12 **CONCLUSION**

13 I THEREFORE ORDER that plaintiff Terence Crawford's motion to remand (**ECF No.**  
14 **21**) is granted. This case is remanded to the state court from which it was removed for all  
15 further proceedings. The Clerk of the Court is instructed to close this case.

16 DATED this 28th day of June, 2022.

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18 ANDREW P. GORDON  
19 UNITED STATES DISTRICT JUDGE  
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